HIGH COURT OF SIKKIM
GANGTOK.

DECREE IN APPEAL
(Under Order 41 Rule 35 of C.P.C.)

The Regular First Appeal No.08of 2006 against the Judgment dated 16/10/2004 of the District Judge(Special Division II) Sikkim at Gangtok in Title Suit(Evicition) No.11 of 2002

Rita Wangdi
Wife of Tenzing Wangdi,
C/o Rita's Beauty Parlour,
Paljor Standium Road,
P.O.Gangtok,Sikkim. ..... Appellant.

Versus

Loden Tshering Bhutia,
S/O. Late Jorden Bhutia,
Paljor Stadium Road,
P.O.Gangtok,Sikkim. ....Respondent.

This appeal was not in the cause list, on mentioned by both Ld.counsel the same was placed before the Hon'ble Court on 13th day of September,2006 before the Hon'ble Shri Justice B.K.Roy,Chief Justice and Hon'ble Shri Justice A.P.Subba,Judge of this Court in presence of Shri Anmole Prasad, Ld.Counsel assisted by Shri Dorjee Sherpa,Ld.Counsel for the appellant alongwith Rita Wangdi, Appellant and Shri A.Moulik,Sr.Advocate assisted by Shri N.G.Sherpa, Ld.Counsel for the Respondent alongwith Loden Tshering Bhutia,Respondent.

In term of Joint Compromise petition filed by the parties the Hon'ble High Court has passed following orders:-

"Heard Mr.Anmole Prasad, Learned Counsel appearing on behalf of the Appellant and Mr. A.Moulik, Learned Senior Advocate appearing on behalf of the Respondent who highlight that this compromise is signed by parties, witnesses as well as their learned Counsel, and it would be best interest of justice to accept the same.

We do not find that the terms and conditions entered upon between the parties are violative of any statutory provision and/ or public policy and, accordingly, accept the compromise and dispose of this Appeal.

The compromise petition shall form part of the Decree of this Court".

Given under my hand and seal of the Court this 13th day of September, 2006.

Prepared by

13/9/06

ADDL.REGISTRAR-CUM-SR.READER
HIGH COURT OF SIKKIM
GANGTOK.

13/9/2006.

REGISTRAR-GENERAL (O)
HIGH COURT OF SIKKIM
GANGTOK.

THE HIGH COURT OF SIKKIM : GANGTOK

R.F.A. No. 8 of 2006
and
Civil Revision Petition No. 05 of 2006

Rita Wangdi,
Wife of Tenzing Wangdi,
C/o Rita's Beauty Parlour,
Paljor Stadium Road,
Opposite Car Park,
P.O. Gangtok, Sikkim ... Defendant/Appellant & Opposite Party/Petitioner

-Versus-

Loden Tshering Bhutia,
Son of Late Jorden Bhutia,
Paljor Stadium Road,
Opposite Car Park,
P.O. Gangtok, Sikkim. ...Defendant/Respondent & Opposite Party/Opposite Party

For the Appellant/ Petitioner. : Mr. Anmole Prasad, Advocate

For the Respondent/ Opposite Party : Mr. A. Moulik, Senior Advocate assisted by Mr. N.G. Sherpa, Advocate.

Before: Hon'ble Mr. Justice Binod Kumar Roy, Chief Justice

Hon'ble Mr. Justice N.S. Singh.

Heard & CAV on May 9, 2006

Date of Order : May 11, 2006

ORDER

Binod Kr. Roy, C.J.

This common order disposes the question of maintainability of this First Appeal as well as this Civil Revision.

2. The facts relevant for disposal of the question of maintainability are in an extremely narrow compass.

2.1 The Eviction Suit in question was filed by the Respondent (Plaintiff/Landlord) for eviction of the Appellant (Defendant/Tenant). The Suit, after contest, was decreed by Judgment and Decree dated 16th October, 2004.

2.2 The Defendant/Tenant filed an application on 29th November, 2004 seeking review of the aforementioned Judgment along with an application seeking condonation of delay of 14 days. The application seeking condonation of delay, after contest on merit by the Appellant, was allowed vide Order dated 10th August, 2005. However, the petition seeking review, after contest, was dismissed vide Order dated 05th October, 2005.

2.3 The First Appeal is against the Judgment and Decree aforementioned. Civil Revision has been filed against the Order rejecting the Review Application.

2.4 Since the First Appeal and Civil Revision both are barred by limitation, applications seeking condonation of their delay have also been filed.

2.5 Civil Revision was filed after a doubt cropped up about the maintainability of the Appeal on account of filing of Review.

3. Mr. A. Moulik, learned Senior Advocate of the landlord raised a preliminary objection regarding the maintainability of the Appeal on the ground that since the Tenant chose to file a review application after the Judgment and therefore, she has waived/abandoned her right to appeal against the Judgment after rejection of her Review Petition on merit. Her Review is also not maintainable in view of the bar created by Order XLVII Rule 2 and this Civil Revision is also liable to be dismissed as not maintainable. To support his submissions he relied upon (i) Union of India Vs. Bharat Fire and General Insurance Ltd., New Delhi, AIR 1961 Punjab 157 (Paragraph 10); (ii) Sikkim Subba Associates Vs. State of Sikkim, (2001) 5 SCC 629 [Paragraph 16 (a)] and (iii) M/s Motilal Padampat Sugar Mills Co. Ltd. Vs. The State of Uttar Pradesh and others, AIR 1979 SC 621 (Paragraph 6).

4. Mr. Anmole Prasad, learned counsel for the Tenant, on the other hand contended that there is no merit in the preliminary objection as the Appeal has been preferred against the Judgment and Original Decree under Section 96 of the Code of Civil Procedure; Review Application was also maintainable on 29th November, 2004 the date on which it was filed. Mr. Prasad relied upon (i) Sha Mulchand and Co. Ltd. Vs. Jawahar Mills Ltd., Salem, AIR 1953 SC 98 (observations made by Vivan Bose, J.); (ii) Humayun Properties Ltd. Vs. Ferrzzints (Private) Ltd., AIR 1963 Calcutta

473 (Paragraph 9); (iii) M/s Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, AIR 1964 SC 1372 (Paragraph 8); (iv) Veluri Sitaramasastry and others Vs. Isukapalli Sundaramma and others, AIR 1966 AP 173 (Paragraphs 6, 8 and 10); and (v) Rekha Mukherjee Vs. Ashish Kumar Das and others, AIR 2005 SC 1944 (Paragraph 31).

5. In reply, Mr. Moulik, argued that Order XLVII Rule 2 contemplates filing of a review only by a party who is not appealing from a Decree or Order; the date of filing of review is not relevant; and that as in the decisions relied upon by Mr. Prasad his submission not having been considered which have got substance and thus be accepted.

6. We first refresh the statutory provisions.

7. Section 96 of the Code of Civil Procedure, under which the Appeal has been filed, reads as under: -

> "**96. Appeal from original decree.** – (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeal from the decisions of such Court.
>
> (2) An appeal may lie from an original decree passed *ex parte*.
>
> (3) No appeal shall lie from a decree passed by the Court with the consent of parties.
>
> (4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees."

7.1 Section 114 of the Code of Civil Procedure read as under: -

> "114. Review. – Subject as aforesaid, any person considering himself aggrieved, -
> (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.
> (b) by a decree or order from which no appeal is allowed by this Code, or
> (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

7.2 Section 115 of the Code of Civil Procedure reads as under: -

> "115. Revision.- (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears –
>
> (a) to have exercised a jurisdiction not vested in it by law, or
> (b) to have failed to exercise a jurisdiction so vested, or
> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,
>
> the High Court may make such order in the case as it thinks fit:
>
> Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision. Would have finally disposed of the suit or other proceedings.
>
> (2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation.- In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

7.3 Order XLVII of the Code of Civil Procedure, reads as under: -

> "**1. Application for review of judgment.** – (1) Any person considering himself aggrieved –
>
> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
> (b) by a decree or order from which no appeal is allowed, or
> (c) by a decision on a reference from a Court of Small Causes,
>
> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.
>
> *Explanation.* – The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."
>
> (Emphasis supplied)

8. From the Punjab High Court Judgment in Union of India (Supra) we find that at Second Appellate stage when an objection was raised for the first time it was held that the points raised are not so clear so that it can be allowed in second appeal. In Sikkim Subba Associates (Supra) it was laid down that waiver involves a conscious, voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, the party would have enjoyed. In M/s Motilal Padampat Sugar Mills Co. Ltd. (Supra) it was laid down that the true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between them.

9. In Sha Mulchand (Supra) S.R. Das, J. (who delivered Judgment on his behalf and Mahajan, and Ghulam Hasan JJ) held that the plea of abandonment of rights is an aggravated form of waiver, acquiescence or laches and akin to estoppel

cannot be sustained and mere waiver, acquiescence or laches not amounting to an abandonment of his right or to an estoppel against a person cannot disentitle that person from claiming relief in equity in respect of his executed and not merely executory contract. Vivian Bose, J. while, agreeing with the conclusion, clarified his position about abandonment and waiver looking at first principles. In Humayun Properties Ltd. (Supra) the Calcutta High Court referred to the observations made by Vivian Bose, J. in Sha Mulchand and Co. (Supra).

9.1 In M/s Thungabhadra Industries Ltd. (Supra) it was held as follows in regard to permissibility for filing an application for review on the date on which no appeal was filed: -

> "Order XLVII R. 1(1) of the Civil Procedure Code permits an application for review being filed "from a decree or order from which an appeal is allowed but from which no appeal has been preferred". In the present case, it would be seen, on the date when the application for review was filed the appellant had not filed an appeal to this Court and therefore the terms of O. XLVII R.1(1) did not stand in the way of the petition for review being entertained. Learned Counsel for the respondent did not contest this position. Nor could we read the judgment of the High Court as rejecting the petition for review on that ground. The crucial date for determining whether or not the terms of O. XLVII R. 1(1) are satisfied is the date when the application for review is filed. If on that date no appeal has been filed it is competent for the Court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the appeal itself has been disposed of, the jurisdiction of the court hearing the review petition would come to an end."

9.2 The Calcutta High Court in Mrs. Rekha Mukherjee, AIR 2005 Calcutta 74, took a view that an appeal could be filed in anticipation and even if an appeal has been filed after the review is allowed by the same party, who succeeds in review, has to be stick to one or other option of electing either of the two as the review and appeal cannot go together. On Appeal the Supreme Court in Rekha Mukherjee, (Supra) did not approve this view by holding as follows: -

> "31. The doctrine of eclipse has no application in a case of this nature. An appeal preferred in terms of Section 96 CPC must conform to the requirements contained in Order41 thereof. An appeal at the time of its filing would either be maintainable or would not be. The High Court, with respect, was not correct in holding that such an appeal could be filed in anticipation. If such a procedure is contemplated in the law, the Respondents herein might not have filed the substantive appeal or would have prayed for withdrawal of the review application before the trial court itself. Having filed a review application on legal advice and having succeeded therein in part, it was not open to it to prefer an appeal against the entire decree dated 20-12-2001 whereby the suit in its entirety was dismissed. The Respondents could have only preferred appeal only from that part of the decree in respect whereof review was not granted. In a suit for specific performance of contract, a prayer in the alternative is ordinarily made to the effect that in the event the court declines to grant a decree for specific performance of contract, it may direct refund of the earnest money with interest.
>
> 32. The right of review is a statutory right. Such right can be invoked if the conditions therefore are fulfilled. So is a right of appeal. A right of review and right to appeal stand on different footings although some grounds may be overlapping. If a review is granted, the decree stands modified but such modification of a decree is not an ancillary or a supplemental proceeding so as to be revived upon setting aside the decree granting review."

9.3 We find that a Division Bench of the Calcutta High Court in Gour Krishna Sarkar and another Vs. Nilmadhab Saha and others, AIR 1923 Calcutta 113, had held as follows: -

> "When an application for review is granted, the decree previously made is vacated, with the consequence that an appeal preferred against the decree can no longer be prosecuted. When a Judge decides to grant an application for review, he should record an order to that effect, and a note thereof should be made in the register under O. 47, R. 8. The order should state clearly whether the decree is to be vacated in its entirety or not. A review proceeding commence ordinarily with an *ex parte* application. The Court then may either reject the application at once or may grant a rule calling on the other side to show cause why the review should not be granted. In the second stage the rule may either be admitted or rejected and the hearing of this rule may involve to some extent an investigation into the merits. If the rule is discharged, then the case ends. If, on the other hand, the rule is made absolute, then the third stage is reached, the case is reheard on the merits and may result in a repetition of the formet decree or in some variation of it. Though in one aspect, the result is the same whether the rule is discharged or on the rehearing the original decree be repeated, in law there is a material difference, for in the latter case the whole matter having been re-opened, there is a fresh decree; in the former case the parties are relegated to an still rest on the old decree. Consequently an order appropriate to a discharge of the rule is the rejection of the application; an order so made terminates the second stage of the proceedings; and there is no third stage for the rehearing of the case."

9.4 We also find that a Full Bench of the Allahabad High Court in Behari Lal and another Vs. M.M. Gobardhan Lal and others, AIR 1948 Allahabad 353, held as follows: -

> "The filing of an appeal subsequent to the filing of an application for review does not make the hearing of the review application incompetent."
>
> X X X
>
> "When the law gives a Court jurisdiction to entertain an application for a review of judgment, such jurisdiction "cannot be taken away or cut down except by express words or necessary implication." There are no express words in the Code which may oust such jurisdiction on an appeal having been preferred to a

higher Court; nor can any necessary implication be inferred from the terms of S. 114 or the rules contained in O. 47 of the Code. Hence from the general scheme of the Code of Civil Procedure and the specific provisions contained in S.114 and O. 47, the preferring of an appeal subsequent to the filing of an application for review does not make the review application incompetent." [Para 33]

X X X

"The crucial date under O. 47, R. 1(a) is the filing of the application for review. If on that date the appellate Court has no appeal pending before it, the review application is under the Code, as it stands, competent. The power to deal with the review in such a case remains in existence till such period as the appeal is not heard and disposed of. After the appeal has been heard and a decree passed by the appellate Court, it is not open to the Court before whom the application for review was presented to proceed with its hearing. But where an application for review of judgment is granted, the order for review supersedes the original decree and the decree under appeal ceases to exist and the appeal cannot be heard."

[Para 41]

X X X

"The powers of an appellate Court are to be found enumerated in S. 107 read with O.41, Civil P.C. The grounds which would justify a Court to entertain an application for review have, on the other hand, been laid down in S. 114 read with O. 47, R. 1, Civil P.C. Order 47, R.1 is a reproduction of S. 623 of the Code of 1882 which is substantially the same as S. 376 of the Code of 1859. It will be noticed that it is open under these sections and orders to a person considering himself aggrieved by a decree or order specified in clause (a), (b) or (c) of S. 114 to apply for a review on one of the following grounds: (a) discovery of new or important matter of evidence, which notwithstanding the fact that the party aggrieved had exercised due diligence, was not within the knowledge of the party or could not be produced by him at the time when the decree was passed or the order made, (b) some mistake or error apparent on the face of the record, or (c) for any other sufficient reason. When the Court grants a review it is open to it to either re-hear the whole case or confine the hearing only to the particular point on which the review was allowed. It will be noticed that one of the

conditions laid down for an application for review is that it must be filed before an appeal has been preferred. On the question as to what is meant by the words "an appeal has been preferred," I may refer to a case, 41 C.W.N. 129, in which a decree was passed by the High Court of Calcutta in its ordinary original civil jurisdiction on 4th March 1986. The memorandum of review was filed on 20th May 1936. Five days later, i.e. on 25th May 1936 a memorandum of appeal was filed against the decree of 4th March 1936. The question was whether the review application was filed at a time when no appeal had been preferred. The view of the Court was that the review application had been filed before the appeal was preferred. Pankridge J. held that the review had been filed before the appeal was preferred and that the Court could not be said to have been deprived of the jurisdiction to entertain the application for review on the ground that when the application came on to be dealt with an appeal was pending. The *crucial* date, therefore, is the filing of the application for review. If on that date the appellate Court has no appeal pending before it, the review application is under the Code, as it stands, competent. The power to entertain the review remains in existence till such period as the appeal is not heard and disposed of. After the appeal has been heard and a decree passed by the appellate Court, it is not open to the Court before whom the application for review was presented to proceed with its hearing. But where an application for review comes to be heard and decided before the appeal is heard and finally disposed of, the position is that it is incompetent for the appellate Court to hear the appeal for the new decree is, in that case, held to supersede the decree appealed from. That this is the law is clear from a long course of decisions to which attention has been drawn pointedly by my brother, Harish Chandra. I may say that my interpretation of those cases is that they lay down that where an application for review of judgment is granted, the order for review supersedes the original decree and the decree under appeal ceased to exist and the appeal can not be heard. This proposition is deducible from the following cases: 6 Cal. 22, 28 All. 240, 34 All. 282, 44 Cal. 1011, 31 Bom. L.R. 137, 34 C.W.N. 1002 and 35 C.W.N 251. The position, then, is that, as laid down by Chatterjee and Newbould JJ. in 44 Cal. 1011.

X X X

" the Court has power, and in fact is bound to proceed with the application for review notwithstanding the fact that an appeal has been

> subsequently filed in the case. But that power exists so long as the appeal is not heard, because once the appeal is heard, the decree on appeal is the final decree in the case, and the application for review of judgment of the Court of first instance can no longer be proceeded with. Whether it can be so proceeded with (after the appeal is heard) in cases coming under O. 47 R.1 (2) it is unnecessary for us to consider. On the other hand, if the application for review is successful, the appeal cannot proceed."

9.5 We further find that a Division Bench of the Delhi High Court in Hari Singh Vs. Smt. S. Seth, AIR Delhi 1996 Delhi 21, following Thungabhadra (Supra), observed thus: -

> "6. Under Order 47, Rule 1(a), C.P.C., an application for review of a judgment lies by any person aggrieved by a decree or order "from which an appeal is allowed but from which an appeal is allowed but from which no appeal has been preferred". The propositions have been laid down by the Supreme Court in Thungabhadra Industries case, AIR 1964 SC 1372, firstly that if before the making of an application for review, an appeal from the judgment sought to be reviewed has already been filed and is pending, then the Court has no jurisdiction to entertain the review application, secondly where the application for review is first made and thereafter an appeal is preferred (as done in this case), the review application can be disposed of provided the appellate Court has not disposed of the appeal before the review application is taken up for disposal. The present case falls within the second principle and the learned trial Judge rightly refused to hear the review application."

10. The ratio decidandi of the two judgments of the Apex Court in M/s Thungabhadra Ind. Ltd. (Supra) and Rekha Mukherjee (Supra) are binding on us, they are undistinguishable despite strenuous argument of Mr. Moulik. In this context, it is relevant to remember that the binding effect of these two judgments cannot be ignored on the

grounds of non-advancing arguments or inadequately considered or some aspect presented before us were not expressly raised [See T. Govindaraja Mudaliar Vs. State of Tamil Nadu, AIR 1973 SC 974; Ambika Prasad Mishra Vs. State of U.P., AIR 1980 SC 1762; Anil Kumar Neotia Vs. Union of India, AIR 1988 SC 1353; Kesho Ram and Co. Vs. Union of India, (1989) 3 SCC 151 and D.K. Yadav Vs. J.M.A. Industries Ltd., (1993)3 SCC 259].

11. We accept the contention of Mr. Prasad that by filing Review Petition before the Trial Court no advantage, benefit or claim or privilege was derived by the Appellant. In our view the appellant not having induced the Respondent in any manner while pursuing her review and in not filing appeal earlier it cannot be said that she has abandoned her right to appeal.

12. The ratio laid down in cases relied upon by Mr. Moulik do not apply at all in regard to the question of maintainability of this Appeal or Civil Revision. The right to file an Appeal become a vested right the day on which the suit was filed and clearly available under Section 96 of the Code of Civil Procedure. Since appeal was not filed when the Review Petition was filed and since against the Order rejecting review, no appeal lies under Order XLIII C.P.C. therefore, Civil Revision is clearly maintainable.

13. If the appellant succeeds in her Appeal, the review petition has to be dismissed as having become infructuous but that stage is yet to arrive.

14. We, thus, reject the preliminary objections.

(Binod Kumar Roy)
Chief Justice

(N.S. Singh)
Judge

A.F.R.

(JK)
PS TO HCJ

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
5.	13.9.06	On mention being made by both the learned counsel, the office is directed to place this case before us today. Later: Title Suit (Eviction) No. 11 of 2002 was filed by the Respondent for eviction of the Appellant. The said Suit, after contest by the Appellant, was decreed. The instant First Appeal has been filed by the Tenant against the aforementioned Judgment and Decree of her eviction. [2] Today both parties file a joint petition of compromise of their own free will, without any coercion or undue influence from any quarter whatsoever, settling their dispute on the terms and conditions mentioned in the Agreement (copy appended as Annexure –A) the relevant part of which for the sake of gravity are reproduced below: - "1. Notwithstanding anything contained in the decree passed in T.S. No. 11 of 2002 by the District Judge, Special Division-II at Gangtok the terms of this agreement shall supersede and prevail with regard to the rights and obligations of the parties concerning the subject matter of the suit. 2. The first party shall continue in occupation of the suit premises as described in the schedule of the plaint thereof as a monthly tenant only for a period of five years from the date of execution of these presents that is to say,	

Order	Order	Order with Signature	Office Note as to action (if any) taken on Order

until the 12th day of September, 2011 (twelfth September two thousand eleven) free from any hindrance, obstruction or interference from the second party. It is made clear that from the date of execution of these presents the tenancy shall be governed by the Gangtok Rent Control and Eviction Act, 1956.

3. The first party shall pay a monthly rent of Rs.5,500.00 (Rupees five thousand five hundred) as per English Calendar month. A separate electric meter exclusively to the suit premises has been installed for the first party who shall pay electricity charges to the second party per month as per meter reading. The first party shall be allowed access to the meter at all times for maintenance and for this purpose a duplicate key to the meter box shall be provided. Water charges shall be payable by the first party @ Rs.15.00 per month.

4. The rents and other charges along with arrears shall be payable within the seventh day of every following English calendar month.

5. Upon the expiry of the aforesaid period of tenancy on the 12th September, 2011, (twelfth September two thousand eleven) the first party shall quit, vacate and deliver peaceful vacant possession of the suit premises to the second party without any objection or demur and thereafter the first party shall have no further claim in and over the suit premises. The first party shall not sublet or transfer the suit premises to any third party.

6. Provided however that the first party shall be at liberty to vacate the suit premises and surrender the tenancy at any time before the expiry of the period of five years as stipulated above upon payment of entire running rent as well as arrears of licence fees/rent, electricity charges, water charges, etc.

7. The parties hereby agree that the account of arrears of licence fees/rent and other charges due and payable have been re-calculated and are as follows: -

No. of Order	of Order	Order with Signature	Office Note as to action (if any) taken on Order

Arrears of licence fees/rents from November 2001 to 12th Sept. 2006 rounded off to 58 ½ months @ Rs.3,100.00 per month	Rs.1,81,350.00
Arrears of electricity charges from November 2001 to 12th Sept. 2006 rounded off to 58 ½ months @ Rs.1000.00 per month	Rs.58,500.00
Arrears of water charges from November 2001 to 12th Sept. 2006 rounded off to 58 ½ months @ Rs.10.00 per month	Rs.585.00
Total	**Rs.2,40,435.00**

The claim to the licence fees/rents from January 2001 (two thousand one) to October 2001 (two thousand one) has been forgone by the second party.

8. The first party agrees that out of the aforesaid arrears she shall pay to the second party a sum of Rs.1,00,000.00 (Rupees one lakh) on the date hereof and liquidate the balance of Rs.1,40,435.00 in 24 monthly instalments of Rs.5,851.00 (Rupees five thousand eight hundred fifty one) each as per English calendar month commencing from the date of execution hereof and each of such instalment per month shall be paid within the first week of every following month.

9. On the failure of the first party to perform the terms and covenants herein contained, the second party shall be entitled to forthwith determine her tenancy and to evict the first party and to recover any decretal amount by putting the decree passed in terms hereof into execution forthwith.

10. This agreement shall be filed in the aforesaid appeal and revision proceedings and a joint prayer shall be made and moved before the

No. of Order	of Order	Order with Signature	Office Note as to action (if any) taken on Order

Hon'ble High Court of Sikkim for a decree in terms of this agreement.

11. Such decree shall be enforceable and executable by either of the parties against the other of them.

12. The parties shall bear their respective costs of litigation.

13. The second party shall issue properly stamped and signed receipts to the first party simultaneously upon the receipt of all payments made under these presents.

14. Provided however and wherever such an interpretation would be required to give the fullest possible scope and effect to the terms, conditions and covenants hereof the expressions 'first party' and 'second party' shall mean and include in whatever gender, their respective legal heirs and representatives, successors, agents and assigns whomsoever."

[3] Heard Mr. Anmole Prasad, learned counsel appearing on behalf of the Appellant and Mr. A. Moulik, learned Senior Advocate appearing on behalf of the Respondent who highlight that this compromise is signed by both parties, witnesses as well as their learned Counsel, and it would be best interest of justice to accept the same.

[4] We do no find that the terms and conditions entered upon between the parties are violative of any statutory provision and/or public policy and,

No. of Order	Date of Order	Order with Signature	Office Note, as to action (if any) taken on Order
		accordingly, accept the compromise and dispose of this Appeal. [5] The compromise petition shall form part of the Decree of this Court. (Binod Kumar Roy) Chief Justice (A.P. Subba) Judge	Trial Court records forwarded on 19.9.06. 19/9/06